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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,626	06/22/2001	Michael L. Howard	2291.2.2	7409

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EXAMINER

HOLLOWAY III, EDWIN C

ART UNIT	PAPER NUMBER
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2635

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/887,626

Applicant(s)

HOWARD ET AL.

Examiner

Edwin C. Holloway, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1-23-03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**EXAMINER'S RESPONSE**

1. In response to applicant's amendment filed 1-23-03, all the amendments to the specification and claims have been entered. The examiner has considered the new presentation of claims and applicant's arguments in view of the disclosure and the present state of the prior art. And it is the examiner's opinion that the claims are unpatentable for the reasons set forth in this Office action:

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glorioso (US 5926776) in combination with Von Kohorn (US 5128752).

Glorioso discloses a smart thermostat 10 with interface 32 communicating with temperature control devices 44-48, transceiver 18 including receiver 22, processor 34 and memory 36, display 16, user input 14 and temperature sensor 12 shown in fig. 1. A corresponding method of operation is shown in fig. 3. Col. 3 lines 9-39 discloses that the receiver 22 receives input signals from the energy provider 60. This receiver is disclosed as a wireless receiver such a wireless cellular telephone that represents a paging module. If paging is not clear, then such would have been obvious in view of the prior art pager controlled thermostat in col. 1 and the statement at the end of col. 3 that the invention does not depend on specific frequency range, signal format or modulation scheme. Col. 5 line 54 - col. 6 line 3 discloses that the input signals include request information, announcements and/or promotions for shutdown or curtailment that are

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displayed on display 16. The memory stores software instruction code for monitoring and adjusting the energy supply including code to verify that an action has taken place in col. 4 lines 37-51 and returns user status information including control signals, temperature, temperature points and acceptable energy costs in col. 4 lines 52-67 representing history and received signals. Glorioso differs from the claims by not specifying manual verification.

Von Kohorn discloses a system and method for generating tokens or coupons including verification data manually used by a user for redemption. See the abstract. The verification code generated from data received in a radio broadcast promotion stored in memory 28. See col. 4 line 3 - col. 6 line 65. Col. 7 lines 16-38 discloses preventing forgeries and cheating. Col. 7 lines 38 - 54 discloses that manual verification has the advantage of reduces capital investment by the absence of two way communication, but may be used with two way communication.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in Glorioso the manual verification of Von Kohorn in order to reduce capital investment by not requiring two way communication and to prevent forgeries and cheating. The combination is suggested by both references disclosing radio communication of promotions and generating verification codes.

*EA* Verification using identification would have been obvious in view of Col. 7 lines ~~31~~5-37 of Von Kohorn including identification.

4. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glorioso (US 5926776) and Von Kohorn (US 5128752) as applied above and further in

view of Nierlich (US 6519509), Wilson (US 6160993), Hunter (US 5243654) and/or Chainer (EP 1020813).

Nierlich discloses an analogous art energy curtailment system with curtailment history in col. 8, pager communication in col. 10 and encryption of information in col. 10 line 20 for security.

Wilson discloses a method and apparatus for wireless control of devices such as thermostat (cols. 5, 17) with encryption of return signals with serial number (cols. 6, 18).

Hunter discloses a metering system with display of an encrypted verification code based on a serial number and a meter reading or history. See col. 6 lines 30-47.

Chainer discloses a method and apparatus for securely determining the history of a good by storing and displaying history information such as temperature which is encrypted to be difficult to modify, counterfeit or tamper with. See the abstract and col. 6 lines 39-41.

If "history data is not the same as the verification code" is not clear from the combination applied above then it would have been obvious to one of ordinary skill in the art at the time the invention was made to have encrypted the history data as disclosed in Nierlich, Wilson, Hunter and/or Chainer in order to provide verification information that is secure, difficult to modify, counterfeit or tamper with as suggested by Glorioso disclosing encryption in col. 7 line 8 and Von Kohorn disclosing preventing forgeries and cheating in col. 7 line 17. This encryption corresponds to applicant's "not the same as" in view of the cryptographic function on page 12 of applicant's

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specification. Using ID would have been obvious in view of the use of serial number in Wilson and Hunter corresponding to a serial number.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2003/0027593 US 2003/0045968 discloses a communication module similar to the instant invention with same and common inventors, respectively. Martinez (S 4322842), Ratz (US 5197668), Proffitt (US 6254009) and Gelbien (US 6374101) disclose ratio control thermostats.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


**CONTACT INFORMATION**

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology center 2600 receptionist whose telephone number is **(703) 305-4700**.

Facsimile submissions may be sent via fax number (703) 872-9314 to customer service for entry by technical support staff. Questions regarding fax submissions should be directed to customer service voice line (703) 306-0377.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin C. Holloway, III whose telephone number is (703) 305-4818. The examiner can normally be reached on M-F (8:30:-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on (703) 305-4704.

EH  
4/6/03

  
**EDWIN C. HOLLOWAY, III**  
**PRIMARY EXAMINER**  
**ART UNIT 2635**